DRN-3365780

The complaint

Mr D complained that Everyday Lending Limited trading as Everyday Loans irresponsibly provided him with an unaffordable loan.

What happened

The main loan details are as follows:

Date	Amount	Term	Monthly repayment	APR	Total amount repayable
30/08/2016	£4,000	30 months	£272.89	89.9%	£8,186.70

One of our investigators reviewed what Mr D and Everyday Loans told us and he thought that Everyday Loans shouldn't have provided this loan. So he recommended upholding Mr D's complaint. Everyday Loans disagreed and asked for an ombudsman review of this complaint.

In brief summary, Everyday Loans said that its loan consolidated Mr D's payday lending and broke the debt cycle he had found himself in. Additionally, he would be able to pay off a lump sum on his largest credit card. Everyday Loans said its affordability calculation showed that the payday loan cycle he was in was unaffordable as Mr D was left with a negative monthly disposable income – in other words, a shortfall each month before this loan. After taking out this loan and using it for the planned debt consolidation Everyday Loans said Mr D should instead have a monthly surplus.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable/irresponsible lending, including all of the relevant rules, guidance and good industry practice, on our website. Having thought about everything, I agree with the conclusion our investigator came to. I'll explain why I say this.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower already struggling with debt that can't be repaid in a sustainable way.

Everyday Loans asked Mr D about his income and expenses. It also did its own credit check to understand his credit history and find out about his existing credit commitments and it reviewed bank statements provided by Mr D.

After checking information it saw on his bank statements, Everyday Loans recorded Mr D's monthly take home pay was around £1,583. Everyday Loans took into account the amount Mr D said he paid for board and lodging and relied on nationally available statistics when thinking about Mr D's likely spending on other living costs.

Based on this, Everyday Loans' affordability assessment led it to conclude that after taking out its loan and using it for the planned debt consolidation, this should've moved Mr D from a position where he had a monthly shortfall to having around £256 surplus cash each month.

So Everyday Loans was satisfied that the loan would be sustainably affordable for Mr D.

Like our investigator, I think Everyday Loans' checks were broadly proportionate. But, despite its affordability calculation appearing to show that Mr D should have had enough disposable income each month to cover the loan repayments, I think Everyday Loans should've realised this was unlikely, given the picture painted overall by the other information it had gathered.

I think Everyday Loans saw that Mr D had an established record of using expensive short-term and unsecured loans and, when he applied for this loan, he was already paying at least ten other providers of payday loans and high cost credit. In total, he owed more than £13,000 on loans – as well as more than £4,500 on a mail order account and two active credit cards which were both maxed out at the account limits.

He had continued to borrow in the months running up to applying for this loan – including taking three new payday loans in the weeks before applying for this loan.

Despite also receiving payments into his account from friends as well as these other lenders, Everyday Loans saw from his bank statements that Mr D was still going overdrawn from time to time. This led to direct debit payments being returned to the account and Mr D incurring bank fees for using his overdraft and going overdrawn on an unplanned basis.

When Mr D applied for this loan Everyday Loans worked out that his debt servicing costs to existing creditors were already close to three quarters of his verified take home pay. I think that this amount was such a significant proportion it was a further clear indication that Mr D had become over-reliant on credit and, in reality, was already experiencing financial difficulty.

I think Everyday Loans should've realised that Mr D's debt had got beyond his control and it seemed likely he was borrowing from one creditor to pay others.

I've taken into account that the loan was used for debt consolidation and Everyday Loans directly repaid some of Mr D's outstanding credit before paying the loan balance to him – which it thought Mr D would use to reduce his largest credit card balance.

But I don't think Everyday Loans had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation. I think the scale of his overall debt compared to the value of the loan and the extent of Mr D's evident reliance on taking out expensive credit would suggest that he would remain in serious financial trouble regardless.

And bearing in mind that even with this debt consolidation his monthly debt servicing costs would likely be equivalent to around half his income, it was unrealistic to expect Mr D to be able to commit to paying such a significant level of income towards debt repayments over the loan term.

Thinking about all the information Everyday Loans had gathered, I can't reasonably say that it made a fair lending decision.

I don't think Everyday Loans was able to safely conclude that its loan would be sustainably affordable for Mr D. I believe that Everyday Loans ought reasonably to have been aware that this loan was likely to be detrimental to Mr D and recognised that it shouldn't have provided it.

So Everyday Loans needs to put things right.

As Mr D has been further indebted with a high amount of interest on a loan that he shouldn't have been provided with he has lost out as a result of what Everyday Loans did wrong.
I think Everyday Loans needs to take the following steps to put things right.

Putting things right

Our investigator didn't recommend that Everyday Loans should pay any additional redress. Mr D hasn't commented on that and I haven't seen anything which makes me think Everyday Loans acted unfairly or unreasonably towards Mr D in any other way. So I'm not awarding any additional redress.

I think it is fair and reasonable for Mr D to repay the capital amount that he borrowed because he had the benefit of that lending - but he shouldn't repay any more than this.

Everyday Loans should do the following:

- add up the total amount of money Mr D received as a result of having been given the loan. The repayments Mr D made should be deducted from this amount.
- If this results in Mr D having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then Everyday Loans should attempt to arrange an affordable and suitable payment plan with Mr D.
- Whilst it's fair that Mr D's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by the decision to lend a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Mr D's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Mr D a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold Mr D’s complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 28 June 2022.

Susan Webb
Ombudsman